

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/14/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 LEE XU and STEPHEN M SZYMANSKI, :
 :
 Plaintiffs, :
 -against- :
 :
 DIREXION SHARES ETF TRUST, RAFFERTY :
 ASSET MANAGEMENT, LLC, DIREXION :
 FAMILY OF INVESTMENT COMPANIES, :
 DANIEL O'NEILL, DANIEL J. BYRNE, :
 GERALD E. SHANLEY, III, JACOB C. :
 GAFFEY, PATRICK J. RUDNICK, ANGELA :
 BRICKL, TODD KELLERMAN, PAUL :
 BRIGANDI, TONY NG, MICHAEL RAFFERTY, :
 KATHLEEN RAFFERTY HAY, U.S. BANCORP :
 FUND SERVICES, LLC, FORESIDE FUND :
 SERVICES, LLC, DIREXION ADVISORS, LLC, :
 :
 Defendants. :
 -----X

22-CV-5090(VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS on September 15, 2022, the Plaintiff Lee Xu and the Defendants entered into a joint stipulation setting forth a schedule to respond to Plaintiff Xu's Second Amended Complaint, *see* Dkt. 105 (the "Joint Stipulation");

WHEREAS on November 14, 2022, Defendants filed a Motion to Dismiss the Second Amended Complaint pursuant to the schedule set forth in the Joint Stipulation, *see* Dkt. 107;

WHEREAS on December 5, 2022, 21 days after Defendants moved to dismiss, Plaintiff filed a Third Amended Complaint, adding, *inter alia*, Stephen M Szymanski as a Plaintiff in this action, *see* Dkt. 110; and

WHEREAS on December 14, 2022, the parties appeared telephonically for a pre-motion conference on Defendants' anticipated motion to strike Plaintiff's Third Amended Complaint, *see* Dkt. 112.

IT IS HEREBY ORDERED that the Joint Stipulation, Dkt. 105, is VACATED.

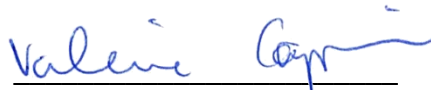
IT IS FURTHER ORDERED that the Court grants Plaintiff Xu leave *nunc pro tunc* to file the Third Amended Complaint. Plaintiffs may not file any further amendments to the complaint without leave of Court.

IT IS FURTHER ORDERED that Defendants' pending Motion to Dismiss, Dkt. 107, is DENIED as moot.

IT IS FURTHER ORDERED that Defendants' deadline to move, answer, or otherwise respond to the Third Amended Complaint is **January 20, 2023**; Plaintiffs' deadline to oppose any motion to dismiss is **February 10, 2023**; Defendants' Reply is due **February 24, 2023**.

SO ORDERED.

Date: December 14, 2022
New York, New York


VALERIE CAPRONI
United States District Judge